Mail Stop Appeal Brief – Patents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Patent Application of Gregory Flickinger.

Conf. No.: 5795	:	Group Art Unit: 2623
Appln. No.: 09/749,255	:	Examiner: Jason P. Salce
Filing Date: 27 December 2000	:	Attorney Docket No.: T727-10

Title: Scheduling and Presenting IPG Ads in Conjunction with Programming Ads in a Television Environment

APPELLANT'S REPLY BRIEF TO THE EXAMINER'S ANSWER

In response to the Examiner's Answer dated February 5, 2008, and further to the Appeal Brief filed June 18, 2007, as amended in the Response to Notice of Non-Compliant Appeal Brief filed October 23, 2007, Applicant hereby submits a Reply Brief in accordance with 37 C.F.R. §41.41 for the above-referenced application.

A Request for Oral Hearing under 37 C.F.R. §41.47 is submitted herewith.

This Reply Brief is being filed in response to Examiner's Answer, dated February 5, 2008 (Examiner's Answer). All of the arguments set forth in the Appellant's Appeal Brief filed June 18, 2007 (Appeal Brief) and Appellant's Response to Notice of Non-Compliant Appeal Brief filed October 23, 2007 (Amended Brief) are incorporated by reference.

RESPONSE TO EXAMINER'S ARGUMENTS

Rejection under 35 U.S.C. § 103

1. Alexander Does Not Teach an "Ordered List"

a. Storage in RAM does not teach an "ordered list"

At the outset, the Examiner admits that "Alexander is silent as to what type of order the ads are stored in," but relies solely on the notion that Alexander "inherently teaches that ads are stored in a particular type of order (e.g., random, consecutive or by genre) by simply teaching that the ads [are] stored in RAM." Examiner's Answer, p. 13. This argument is false and counter-intuitive. The fact that Alexander stores data containing ads in RAM is not indicative of an IPG ad queue that contains "an ordered list of IPG ads," as recited in independent claims 28 and 31. Those skilled in the art would understand that Random Access Memory or RAM contains units of data that can be randomly accessed, such that the order in which the data is stored in RAM is irrelevant. As described by The Microsoft Computer Dictionary, "random access" refers to "the ability of a computer to find and go directly to a particular storage location without having to search sequentially," while noting that files in RAM are often used when "each record has no intrinsic relationship to what comes physically before or after it." Microsoft Computer Dictionary, "random access" (5th ed. 2002) (copy enclosed). Furthermore, in RAM "the storage locations can be accessed in any order," i.e., at random. Microsoft Computer Dictionary, "RAM" (5th ed. 2002). Therefore, when referring to RAM, when data is retrieved, the physical location and its relationship to the previous and future pieces of data are irrelevant. As such, it could not be more clear that Alexander's use of RAM to store data is wholly irrelevant with respect to teaching any type of "order" or "ordered list", and does not at all suggest that the ads are "stored in a particular type of order," as alleged by the Examiner.

b. A "random order" does not constitute an "ordered list"

The Examiner further argues that data in RAM is at least in "random order", and therefore concludes that Alexander teaches an "ordered list." The Examiner cleverly includes the

term "order" in "random order." However, this is nothing but disingenuous semantics. An "ordered list" could not possibly be defined this way in view of the specification and the ordinary meaning of the term. The specification refers to an ordered list by stating, "with the IPG ad queue, ads to be **displayed next** in the IPG can be **ordered** and prioritized according to a number of parameters." Specification, p. 13, lns. 2-3. As such, since the desired **display order** is established by the ordered list, the "ordered list" as recited in the claims is **specifically not in a random order**. Furthermore, the ordinary meaning of "order" is "to put in order" or "to give order to." Merriam Websters Online Dictionary, "order" (2008), *available at* http://www.merriam-webster.com/dictionary/order(last visited April 4, 2008, copy enclosed). This definition supports the notion that there is nothing random about an "ordered list." In fact, Applicants respectfully submit that "random order" can only be explained as something which lacks order. Finally, the absurdity of the Examiner's argument that "random" can be defined as "ordered" is exemplified by Merriam-Webster's thesaurus identifying "ordered" as an antonym of "random." Merriam Webster's Online Thesaurus, "random" (2008), *available at* http://www.merriam-webster.com/thesaurus/random (last visited April 4, 2008, copy enclosed). Therefore, the term "ordered list" cannot be defined to include "random order." As such, the Examiner's contention that Alexander's use of RAM somehow teaches an ordered list of advertisements is unfounded.

2. Alexander Does Not Teach "Reordering"

The Examiner argues that Alexander teaches reordering because "ads can be dynamic and displayed in an order according to assigned priority." (Examiner's Answer, p. 14). This argument fails for several reasons.

a. Alexander does not teach an "ordered list"

As discussed above, Alexander does not teach an ordered list as recited in claims 28 and 31. Since Alexander fails to teach a list, queue or other data structure with an order, Alexander cannot possibly teach a reordering of that list. Applicant's Appeal Brief, ps. 12 – 13.

b. The Examiner's Argument Regarding the "ordered list" Contradicts Itself

In attempting to force Alexander into teaching an "ordered list," the Examiner changes his own definition of what constitutes Alexander's ordered list, rather than being consistent and reading Alexander as a whole as required by MPEP 2141.02 ("A prior art reference must be

considered in its entirety, i.e., as a whole."). The Examiner ignores the fact that display order has no effect on the physical location of data in RAM. If the ordered list is considered to be the physical placement of data in RAM, then there must be a reordering of the physical placement of that data in RAM (which there is not). Conversely, if the reordering is considered to be the advertisement display order then there must be an initial display order (which there is not); consequently, Alexander does not "reorder" as recited in independent claims 28 and 31.

Claims 28 and 31 recite an "IPG ad queue containing ordered list of IPG ads," wherein this ad queue is reordered. The Examiner argues that an "ordered list" is inherent in Alexander because the "ads are stored in RAM," and in RAM, data is "stored in a particular type of order (e.g., random, consecutive or by genre)." Examiner's Answer, p. 13. The Examiner then argues that the "ordered list is reordered because "ads can be dynamic and displayed in an order according to assigned priority." Examiner's Answer, p. 14. The Examiner's logic is faulty since the Examiner first defines an "ordered list" as a physical place in RAM, but then argues that "reordering" the ordered list is effected by a reordering of the display order. This contradiction ignores the fact that a change in the display order has no bearing on the data's physical location in RAM.

More specifically, since the only "order" in Alexander that the Examiner can point to is the order in which the data is physically stored, the Examiner essentially argues that the "ordered list" is defined by the physical location of the data in RAM. Consequently, a ***reordering*** of what the Examiner believes is the "ordered list" in Alexander would necessarily require a reordering of the physical location of the data in RAM. Contrary to the Examiner's own view of what constitutes an ordered list, the Examiner then argues that Alexander "explicitly teaches reordering of IPG ad storage," since the "ads can be dynamic and displayed in order according to assigned priority." However, a change in the order of when ads are displayed has no effect on the physical location of the ad data in RAM since, in RAM, "the storage locations can be accessed in any order. Microsoft Computer Dictionary, "RAM" (5th ed. 2002). The mere fact that the system assigns a priority says nothing about reordering the physical location of the data in RAM.

Thought of another way, the Examiner contends that Alexander teaches "reordering" by virtue of the ads being "displayed in order according to assigned priority." The Examiner fails to explain, however, how the display order was originally established. As noted above, the only "order" the Examiner can find in Alexander is the order in which the ***data*** is physically placed in RAM – not the order in which the ads are to be displayed. The Examiner does not even allege that

this data-placement order has any consequence to the order in which the ads are displayed, because it does not. Therefore, displaying the order of the ads does not constitute "reordering" of anything because there was never an initial order of the ads to be displayed in the first place.

c. RAM memory reallocation

i. Alexander does not teach RAM allocation

In an alternate argument, the Examiner asserts that, "if an ad is retrieved from RAM and displayed, the RAM is implicitly re-ordered based on the stored ad being retrieved and either deleted or reallocated to RAM after the ad has been viewed." Examiner's Answer, p. 14. However, Alexander provides no discussion of how the system's RAM allocates or reallocates memory. Moreover, the section of Alexander cited by the Examiner in support of this feature actually teaches away from this concept: "**Memory permitting**, the Panel ad graphics and/or text and information box text may change ever X (where X is some number) seconds rotating though a limit of N (where N is some number) different graphical or textual executions." Alexander, Col. 26, lines 30 – 34, (emphasis added). Thus, Alexander actually teaches that the RAM does not "delete" or "reallocate" the RAM after an ad has been viewed; rather, it only rotates through ads as "memory permits." Throughout Alexander, whenever the issue of memory management is discussed, the RAM is never reallocated, reorganized or changed; instead, Alexander limits the available content. *See* Alexander, Col. 21, lns. 36 – 38 "there is no finite limit to the number of additional screens; memory limitations ... will limit this number," Alexander Col. 24, ln. 46 "there will be memory limitations." As such, Alexander specifically does not teach memory being deleted or reallocated after the ad has been viewed, but instead teaches putting all desired advertisements in RAM to allow for rotation of these ads. It is counter-intuitive (and therefore not implicit) to delete an ad from RAM after it has been viewed, when the ad will be shown again.

ii. RAM memory allocation is not "reordering" as recited in the independent claims

Additionally, even if Alexander did implicitly teach memory reallocation, this alleged feature of Alexander does not teach "reordering the IPG ad queue" as recited in independent claims 28 and 31. Since RAM memory reallocation does not have any effect on the display order, memory reallocation, even if was taught by Alexander, does not "reorder the IPG ad queue," which includes changing the display order of the advertisements. More specifically, the ad queue in claims 28 and 31 is an "ordered list of IPG ads," wherein the "ads are displayed in accordance

with the IPG ad queue." Therefore, as recited in the claims, the "reordering [of] the IPG ad queue," changes the order in which the ads are to be displayed. In contrast, even if the Examiner is correct about RAM in Alexander constituting an "ordered list" (which he is not), such feature would not teach a reordering of the display order, but rather only the data in memory. As noted by the Examiner "if an ad is retrieved from RAM and displayed, the RAM is implicitly re-ordered." Examiner's Answer, p. 14. Once again, even if this reading of Alexander is accurate, such a feature would have no effect on the display order of the ads. As argued by the Examiner, "higher priority ads will be displayed before other lower priority ads." Examiner's Answer, p. 14. Thus, the Examiner admits that the order of the ads is determined by the ad's priority and not by the location of the data in memory. This means that the alleged reallocation (or reordering) of data in RAM would have no effect on the display order. Therefore, Alexander's alleged teaching of RAM memory allocation does not teach "reordering the [ordered list of IPG ads] in accordance with the displayed programming ad."

Ultimately, Applicants' previous arguments stand: Alexander in view of Hite does not teach or suggest neither an "IPG ad queue containing an ordered list of IPG ads," displaying IPG ads "wherein the IPG ads are displayed in accordance with the IPG ad queue," nor "reordering the IPG ads queue in accordance with the displayed programming ad," as recited in the independent claims. Respectfully, the Examiner has misread Alexander and has continuously misrepresented Alexander's teachings. Therefore, the essence of the Examiner's rejection is incorrect. The combination of Alexander and Hite does not teach all aspects of claim 28 or claim 31.

Conclusion

Applicants respectfully submit that the Examiner's rejections have been previously overcome, and that the application, including claims 35-53, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and a Notice of Allowance are respectfully requested. Applicants respectfully request that the Board reverse the Examiner's rejections of the claims and remand this application for issue.

Respectfully submitted,

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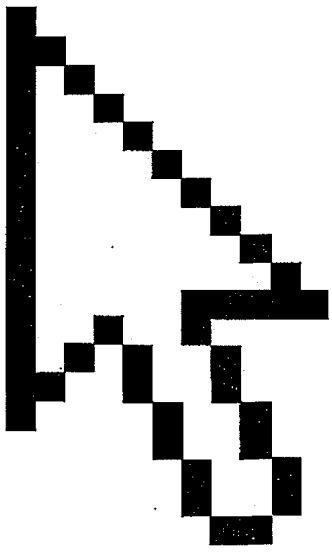

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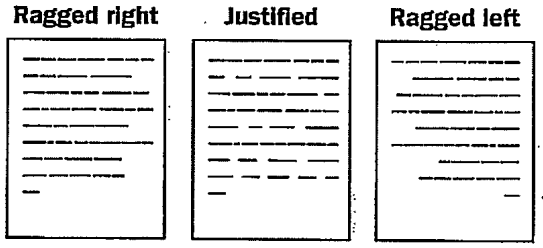
(asymmetric digital subscriber line) that is capable of adjusting transmission speed (bandwidth) based on signal quality and length of the transmission line. As the signal quality improves or deteriorates while a transmission line is being used, the transmission speed is adjusted accordingly. *See also* ADSL, xDSL.

rag *n.* Irregularity along the left or right edge of a set of lines of text on a printed page. Rag complements justification, in which one or both edges of the text form a straight vertical line. See the illustration. *See also* justify, ragged left, ragged right.



Rag.

ragged left *adj.* Of, relating to, or being lines of text whose left ends are not vertically aligned but form an irregular edge. Text may be right-justified and have a ragged left margin. Ragged-left text is used infrequently—typically, for visual effect in advertisements. *See also* rag, right-justify.

ragged right *adj.* Of, relating to, or being lines of text whose right ends are not vertically aligned but form an irregular edge. Letters and other word-processed documents are commonly left-justified, with ragged-right margins. *See also* left-justify, rag.

RAID *n.* Acronym for redundant array of independent (or inexpensive) disks. A data storage method in which data is distributed across a group of computer disk drives that function as a single storage unit. All the information stored on each of the disks is duplicated on other disks in the array. This redundancy ensures that no information will be lost if one of the disks fails. RAID is generally used on network servers where data accessibility is critical and fault tolerance is required. There are various defined levels of RAID, each offering differing trade-offs among access speed, reliability, and cost. *See also* disk controller, error-correction coding, Hamming code, hard disk, parity bit, server (definition 1).

RAID array *n. See* RAID.

RAM *n.* Acronym for random access memory. Semiconductor-based memory that can be read and written by the central processing unit (CPU) or other hardware devices. The storage locations can be accessed in any order. Note that the various types of ROM memory are capable of random access but cannot be written to. The term *RAM*, however, is generally understood to refer to volatile memory that can be written to as well as read. *Compare* core, EPROM, flash memory, PROM, ROM (definition 2).

RAMAC *n.* **1.** Acronym for Random Access Method of Accounting Control. Developed by an IBM team led by Reynold B. Johnson, RAMAC was the first computer disk drive. It was introduced in 1956. The original RAMAC consisted of a stack of 50 24-inch platters, with a storage capacity of 5 megabytes and an average access time of 1 second. **2.** A high-speed, high-capacity disk storage system introduced by IBM in 1994. Based on the original RAMAC storage device, it was designed to fulfill enterprise requirements for efficient and fault-tolerant storage.

Rambus DRAM *n. See* RDRAM.

Rambus dynamic random access memory *n. See* RDRAM.

RAM cache *n.* Short for random access memory cache. Cache memory that is used by the system to store and retrieve data from the RAM. Frequently accessed segments of data may be stored in the cache for quicker access compared with secondary storage devices such as disks. *See also* cache, RAM.

RAM card *n.* Short for random access memory card. An add-in circuit board containing RAM memory and the interface logic necessary to decode memory addresses.

RAM cartridge *n. See* memory cartridge.

RAM chip *n.* Short for random access memory chip. A semiconductor storage device. RAM chips can be either dynamic or static memory. *See also* dynamic RAM, RAM, static RAM.

RAM compression *n.* Short for random access memory compression. This technology was an attempt by a number of software vendors to solve the problem of running out of global memory under Windows 3.*x*. Compression of the usual contents of RAM may lessen the system's need to read or write to virtual (hard disk–based) memory and thus speed up the system, as virtual memory is much slower than physical RAM. Because of the falling prices of RAM and the introduction of operating systems that handle RAM

more efficiently, such as Windows 9x, Windows NT, and OS/2, RAM compression is generally used only on older PCs. *See also* compression, RAM, Windows.

RAMDAC *n.* Acronym for random access memory digital-to-analog converter. A chip built into some VGA and SVGA video adapters that translates the digital representation of a pixel into the analog information needed by the monitor to display it. The presence of a RAMDAC chip generally enhances overall video performance. *See also* SVGA, VGA.

RAM disk *n.* Short for random access memory disk. A simulated disk drive whose data is actually stored in RAM memory. A special program allows the operating system to read from and write to the simulated device as if it were a disk drive. RAM disks are extremely fast, but they require that system memory be given up for their use. Also, RAM disks usually use volatile memory, so the data stored on them disappears when power is turned off. Many portables offer RAM disks that use battery-backed CMOS RAM to avoid this problem. *See also* CMOS RAM. *Compare* disk cache.

RAM refresh *n. See* refresh (definition 2).

RAM resident *adj. See* memory-resident.

RAM-resident program *n. See* terminate-and-stay-resident program.

random *adj.* Specifically, a reference to an arbitrary or unpredictable situation or event. The term is also given an extended, pejorative or semi-pejorative meaning, however, in which it is used in the sense of *nonspecific*, *incoherent*, *poorly organized*, *loser*, and so on.

random access *n.* The ability of a computer to find and go directly to a particular storage location without having to search sequentially from the beginning location. The human equivalent of random access would be the ability to find a desired address in an address book without having to proceed sequentially through all the addresses. A computer's semiconductor memory (both RAM and ROM) provides random access. Certain types of files stored on disk under some operating systems also allow random access. Such files are best used for data in which each record has no intrinsic relationship to what comes physically before or after it, as in a client list or an inventory. *Also called:* direct access. *See also* RAM, ROM (definition 2). *Compare* indexed sequential access method, sequential access.

random access memory *n. See* RAM.

random noise *n.* A signal in which there is no relationship between amplitude and time and in which many frequencies occur randomly, without pattern or predictability.

random number generation *n.* Production of an unpredictable sequence of numbers in which no number is any more likely to occur at a given time or place in the sequence than any other. Truly random number generation is generally viewed as impossible. The process used in computers would be more properly called "pseudorandom number generation."

range *n.* **1.** A block of cells selected for similar treatment in a spreadsheet. A range of cells can extend across a row, down a column, or over a combination of the two, but all cells in the range must be contiguous, sharing at least one common border. Ranges allow the user to affect many cells with a single command—for example, to format them similarly, enter the same data into all of them, give them a name in common and treat them as a unit, or select and incorporate them into a formula. **2.** In more general usage, the spread between specified low and high values. Range checking is an important method of validating data entered into an application.

range check *n.* In programming, a limit check of both the upper and lower limits of a value, thus determining whether the value lies within an acceptable range. *See also* limit check.

RAPI *n. See* Remote Application Programming Interface.

RARP *n.* Acronym for Reverse Address Resolution Protocol. A TCP/IP protocol for determining the IP address (or logical address) of a node on a local area network connected to the Internet, when only the hardware address (or physical address) is known. While RARP refers only to finding the IP address and ARP technically refers to the opposite procedure, ARP is commonly used for both senses. *See also* ARP.

RAS *n.* **1.** *See* remote access server, Remote Access Service. **2.** Acronym for reliability, availability, serviceability. *See* high availability.

raster *n.* A rectangular pattern of lines; on a video display, the horizontal scan lines from which the term *raster scan* is derived.

raster display *n.* A video monitor (typically a CRT) that displays an image on the screen as a series of horizontal

order

Entries 1 to 10 of 34. Next 10

order[1,verb]
order[2,noun]
back-order
back order
cease and desist order
close order
court order
Distinguished Service Order
executive order
gag order

Main Entry: **1or·der**
Pronunciation: \'ȯr-dər\
Function: *verb*
Inflected Form(s): **or·dered**; **or·der·ing** \'ȯr-d(ə-)riŋ\
Etymology: Middle English, from *ordre*, noun
Date: 13th century

transitive verb
1 : to put in order **:** ARRANGE
2 a : to give an order to **:** COMMAND **b :** DESTINE, ORDAIN <so *ordered* by the gods> **c :** to command to go or come to a specified place <*ordered* back to the base> **d :** to give an order for <*order* a meal>
intransitive verb
1 : to bring about order **:** REGULATE
2 a : to issue **orders** **:** COMMAND **b :** to give or place an order
— **or·der·able** \-ə-bəl\ *adjective*
— **or·der·er** \-dər-ər\ *noun*

synonyms ORDER, ARRANGE, MARSHAL, ORGANIZE, SYSTEMATIZE, METHODIZE mean to put persons or things into their proper places in relation to each other. ORDER suggests a straightening out so as to eliminate confusion <*ordered* her business affairs>. ARRANGE implies a setting in sequence, relationship, or adjustment <*arranged* the files numerically>. MARSHAL suggests gathering and arranging in preparation for a particular operation or effective use <*marshaling* the facts for argument>. ORGANIZE implies arranging so that the whole aggregate works as a unit with each element having a proper function <*organized* the volunteers into teams>. SYSTEMATIZE implies arranging according to a predetermined scheme <*systematized* billing procedures>. METHODIZE suggests imposing an orderly procedure rather than a fixed scheme <*methodizes* every aspect of daily living>.
synonyms see in addition COMMAND
[ORDER ILLUSTRATION]

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A B C D E F G H I J K L M N O P Q R S T U V W X Y Z #
order Go

random

One entry found.

random[adjective]

Entry Word: **random**
Function: *adjective*

Text: lacking a definite plan, purpose, or pattern <since we were new in town, our choice of a vet for our dog was entirely *random*>
Synonyms aimless, arbitrary, desultory, erratic, haphazard, hit-or-miss, scattered, slapdash, stray
Related Words accidental, casual, chance, fluky, fortuitous, inadvertent, incidental, lucky, unconsidered, unintended, unintentional, unplanned, unpremeditated; irregular, sporadic, spot; objectless, purposeless; indiscriminate, unsystematic; unaimed, undirected
Near Antonyms established, fixed, regular, set, stable, steady; constant, continuous, even; arranged, managed, orchestrated, ordered, planned; aware, conscious, deliberate, purposeful, thoughtful
Antonyms methodical, nonrandom, orderly, systematic

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random Go